IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.857 OF 2006
IN
SUMMONS FOR JUDGMENT NO.568 OF 2004
IN
SUMMARY SUTI NO.1280 OF 2003

M/s.Videocon International Ltd. ...Plaintiffs
Vs.
M/s.Crystal Audio Limited ...Defendants

Mr.R.D.Soni Advocate i/b.Ram & Co for Plaintiff to show cause
Mr.R.A.Kapadia, Sr. Advocate i/b. Y.N.Adhia for Defendants in support of Notice of Motion

CORAM: SMT. ROSHAN DALVI, J.
DATE : 18TH DECEMBER, 2006.

P.C.

1. The Suit is filed on 7 dishonoured cheques for the aggregate principal amount of Rs.46,38,800/- along with interest at the rate of 24% paid on making up a total of Rs.74,46,264/-. The Suit is filed as Summary Suit in which the Summons for Judgment and affidavit in reply came to be filed.

2. The Defendants were represented by their Advocates at the time of hearing of this Summons for Judgment. By a reasoned order the Summons for Judgment came to be made absolute and a decree as claimed came to be granted on 14th September, 2005. Only the amount of interest was modified to 18%. The Defendants have taken out this Notice of Motion for setting aside the order and decree dated 14th September, 2005. The decree disposed off the entire Summary Suit. Hence, the only remedy open to the Defendants is to file the First Appeal. The Defendants

would therefore, be required to make payment of Court Fees as well as deposit the entire decretal amount in the Court in the said Appeal unless sufficient cause was seen by the Appellate Court to order a lesser deposit under the provisions of Order 41 Rule 11 of the CPC. By taking out this Notice of Motion the Defendants have circumvented the said procedure and sought to be heard on merits without the deposit of the decretal amount and without payment of Court fees. Accordingly the Plaintiffs contend that this Notice of Motion is not maintainable.

3. Mr. Kapadia on behalf of the Defendants drew my attention to the Division Bench Judgment of this Court in Ramchandra Dhondu Dalvi Vs. Vithaldas Gokuldas, AIR, 1964 Bombay 251 (which was prior to the amendment to the CPC in 1976 under which Order 37 came to be amended as well as the amendments of 1999 and 1977 under which Order 41 of the CPC came to be largely amended). In that Judgment the power of the Court to set aside Ex-Parte Decree under Order 37 Rule 4(2) was held not limited to those cases filed on the Defendant’s failure to appear in answer to the Plaintiff’s Summons for Judgment. The power extended to any Ex-parte decree passed in Summary Suits. In this case no Ex-parte decree has been passed. The suit has been decreed as prayed upon the Summons for Judgment having been heard on merits and after considering the Defendants "Substantial Defence". Hence, the judgment referred to by the Defendants does not apply.

4. It is the case of the Defendants that the defence shown by them in the Summons for Judgment was not complete and that much later, upon they having engaged the services of a retainer Advocate, they came upon a document being the Minutes of a Meeting held between the parties with regard to certain transactions in which certain changes were issued only as security for loan to be taken by the Plaintiffs from a Bank. The Minutes of the Meeting relied upon by the Defendants as Exhibit-I to the affidavit in support of the Notice of Motion shows certain transactions between the parties as also a third party ONIDA.

5. It is the Plaintiffs' contention that these Minutes of the Meeting held as far back as 23rd June, 1999, were in respect of certain other cheques. The very first clause being clause (a) of the Minutes of the Meeting relied upon by the Defendants refers to cheques issued by the Defendants to the Plaintiff "from time to time". Hence, it cannot be seen that there was only one transaction between the parties and Minutes referred to only the suit cheques.

6. The consideration under the dishonoured cheque is statutorily presumed. Hence, it is for the Defendants to rebut the presumption. Mr. Kapadia argued that the Defendants must be taken to have rebutted the presumption by production of the Minutes of the Meeting dated 23rd June, 1999.

7. Upon considering these minutes the Plaintiffs reply thereto became essential. That reply shows that the Minutes were with regard to entirely different cheques. The transactions between the parties is not denied. Hence, whether or not the suit cheques came to be issued for a specific transaction is required to be seen.

8. The plaint itself shows not only the 7 dishonoured cheques along with the memos to dishonour issued by the Banks but the corresponding invoices for the exact amounts of the cheques. The invoices are drawn by the Plaintiffs in the names of the Defendants. The transaction between the parties is, therefore, complete. The invoices in fact represent the contract between the parties in writing evidenced by the very cheques issued by the Defendants which came to be dishonoured. The Summary Suit is, therefore, maintainable not only upon the dishonoured cheques upon which the consideration is presumed but also the very transaction between the parties which shows the consideration payable.

9. The Defendants have not rebutted the statutory presumption even on merits. It is seen that the transaction between the parties is for the liquidated amount for which the suit is filed. Upon hearing both the parties on merits the suit came to be decreed.

10. The Notice of Motion lacks bonafides. No sufficient cause is shown. No further substantial defence

is also shown. The Notice of Motion itself is not maintainable. Only an appeal lies from the Judgment.

11. For all these reasons the Notice of Motion is dismissed with costs fixed at Rs.3000/-. Execution of the Decree shall proceed.

(SMT. ROSHAN DALVI, J.)